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March 1, 2002

**VIA FACSIMILE**

Antonio Rossman, Special Counsel  
County of Imperial  
380 Hayes Street  
San Francisco, CA 94102

Re: Notice of Intent to Appear

Dear Mr. Rossman:

Thank you for providing us with a copy of your "Notice of Intent to Appear." The County of Imperial's (the "County") Notice indicates that it will designate additional witnesses prior to March 26, 2002. We object to designation after February 25, 2002. You are attempting to circumvent the express provisions of the State Water Resources Control Board's (the "Board") "Revised Notice of Public Hearing and Amendment to Long-Term Transfer Petition" ("Revised Notice"). The Board clearly set the date for the designation of witnesses as February 25, 2002. Therefore, the County's attempt to designate additional witnesses after this date should be denied. Based upon the need for clarification of this issue, we are copying staff counsel for the Board.

The County's "Notice of Intent to Appear" also indicates that the County intends to participate in both Phase I and Phase II of the hearings. Phase I of the hearings will be limited to the following key issues: (1) Is the amount of water to be transferred that which will be conserved under Water Code section 1011; (2) Would the proposed transfer result in substantial injury to any legal user of water; and (3) Should the Board make any additional findings or reach any additional conclusions regarding the transfer, IID's water rights, or IID's water conservation program. The County's Protest, filed August 15, 2000, does not contain any objection relevant to items 1 or 3 above. Furthermore, with regard to item 2, the County was notified in a June 20, 2000, letter from Harry M. Schueller, Chief, Division of Water Rights, that the County lacked standing to allege that the transfer may result in injury to the County's water right as the County was not a "legal user of water" under Water Code section 1736.

In the Revised Notice the SWRCB does state that objectors need not file a protest (p.3). However, that waiver applies only if the full Notice Of Intent To Appear procedures are followed:

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This notice waives any requirement that persons objecting to the amended petition for change file a protest in order to participate as a party in this proceeding regarding the petition for change. Parties who did not protest the Petition, but who object to the amended petition, will be allowed to participate in the hearing provided they comply with instructions described below under "HEARING PARTICIPATION."

Amended Notice, p.3. (Emphasis added.)

Since the instructions required for hearing participation mandated identification of witnesses by February 25, the County cannot fail to protest, then attempt to name witnesses on the eve of the hearing for an unspecified protest on Phase I. Therefore, the County has no basis to participate in Phase I of the hearings.

Regarding County's participation in Phase II, the County was notified in an August 22, 2000, letter from Chief Schueller that the County's protest was accepted on the "grounds of potential impacts to public trust resources and potential impacts to fish and wildlife." As you will note, the Board has designated these issues for Phase II. The key issue in Phase II will be whether the requested changes "unreasonably affect fish, wildlife, or other instream beneficial uses of water." The County's standing to participate in the hearings is recognized, but we do not believe it fair to keep the identity of Phase II witnesses secret.

By copying staff counsel for the Board, we ask that the Board make it clear to the County that it is not able to designate new witnesses after the February 25, 2002, deadline, and that its participation will be limited to Phase II.

Very truly yours,

David L. Osias

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cc: Dana Differding, Esq.